IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1338 of 1992

For Approval and Signature:

HON'BLE MR.JUSTICE D.H.WAGHELA Sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

1 to 5 NO

BHUPENDRA NATVARLAL MODI

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 1338 of 1992

MR YN OZA for Petitioner No. 1

MS SONAL R SHAH for Petitioner No. 1

MR PD BHATE AGP for Respondent No. 1-3

CORAM : HON'BLE MR.JUSTICE D.H.WAGHELA

Date of decision: 30/06/2004

ORAL JUDGEMENT

1. This petition, under Article 226 of the

Constitution, was pressed mainly for the relief to the effect that the petitioner may be allowed to join on the post of Section Officer in terms of the appointment order dated 27.1.1986. That order at Annexure-A to the petition conveyed to the petitioner that he was selected for the post of Section Officer in the competitive examination held in September, 1983 and was appointed for two years on probation as also on purely ad-hoc and temporary basis. It was also, inter alia, stated in that order that the petitioner was required to join the duty within one month from 1.2.1986 and, in case of his not presenting himself, his name would be deleted from the selection list. It was clearly stated in that order that no correspondence for extending the joining time shall be entertained.

2. In the peculiar facts of the case, the petitioner was already in employment as Employment Officer since 8.11.1983 and, at the time of his aforesaid selection and order, he was facing a criminal trial in the Court of the learned Special Judge at Bhuj-Kutch. Under such circumstances, the petitioner requested the Director of Employment and Training, under whom he was serving as Employment Officer, that he may be relieved for the purpose of joining his duties under the aforesaid appointment order dated 27.1.1986. The petitioner, however, was not relieved on the ground that criminal proceedings were pending against him on the charge of misusing office by demanding bribe from a candidate. The petitioner then approached this Court by way of Special Civil Application No.1178 of 1986 in which it was held that the ground advanced by the Government for not relieving the petitioner was quite proper and genuine and the prayer to extend the joining time was also rejected. While rejecting the petition, it was, however, observed: "In future if the petitioner is exonerated completely and if the petitioner has any claim against the Government on account of his full exoneration from the charges levelled against him, he may resort to appropriate remedy as may be available to him". Thereafter, upon being acquitted by judgment and order dated 2.4.1991 in Special Case No.2 of 1986, the petitioner appears to have made several representations urging the respondent to allow the petitioner to join on the post of Section Officer for which he was selected. It was, on the basis of these facts, contended that the action of the respondent in not relieving the petitioner to join his new assignment was arbitrary, unjust and unreasonable resulting into loss of employment to the petitioner.

3. The learned counsel Ms. Sonal Shah, appearing

for the petitioner, vehemently argued that, after clear acquittal by the Criminal Court, the petitioner was not liable to suffer any punishment or consequence for the charges levelled against the petitioner. She submitted that, apart from the presumption of innocence in favour of an accused person, the presumption stood buttressed by the order of acquittal and the pendency of appeal cannot be allowed to come in the way of grant of appropriate relief to the petitioner. She also submitted that, as held by this Court in PRADYUMAN SINH INDRASINH v. STATE [1982 (2) G.L.R. 309] and STATE AND ANOTHER v. B.C.DWIVEDI [1983 (2) G.L.R. 1315], reliance on mere involvement in criminal case is hazardous and slender consideration which can justify a decision of great consequence to a Government employee; and merely because an acquittal appeal is preferred, it cannot be said that the trial against the accused continues.

4. Relying upon the affidavit-in-reply filed on behalf of the respondent, the learned A.G.P. submitted that, according to the express terms of the appointment order dated 27.1.1986, the petitioner was required to furnish certificates of character, conduct and antecedents and was required to join within one month from 1.2.1986. The petitioner had not and could not have complied with these requirements in view of the fact that the criminal case was pending against him at that time and he was not relieved by his parent department on valid grounds. The issue of the petitioner not being relieved has been agitated in the earlier petition and the judgment in that regard has become final. Referring to Rule 20 of the Government Notification G.A.D. No.GS-80-31-RTR-1078-6302-K dated 1.4.1980, it was submitted that success in the examination for selection by itself did not confer any right to appointment and the candidate could not have been appointed unless the Government was satisfied after such enquiries as may be considered suitable for public service. Thus, the petitioner did not have any indefeasible right of appointment and, during the subsequent years, several other examinations have been held and thus the select list of 1983 examination is not operative.

5. By an affidavit of the Deputy Director of Employment and Training, it is averred that, by order dated 23.10.2000, the appointment of the petitioner as Employment Officer (Class-II), which was made on 8.11.1983 on probation basis for two years, was ordered

to be on long term basis with all consequential benefits like relevant pay scales and increment with retrospective

effect from 5.1.1986 subject to the result of Criminal Appeal No.499 of 1991 pending before the High Court. The petitioner has also been permitted to cross the efficiency bar by order dated 21.12.2000. The pay fixation of the petitioner is also made by order dated 26.2.2001. In view of these orders, the petitioner is stated to have withdrawn Appeal No.131 of 2000 which was admitted by the Gujarat Civil Services Tribunal on 18.7.2000. Thus, in short, the grievances of the petitioner against the Department of Employment and Training, where he continued to serve all throughout, are separately dealt with and the petitioner has reserved his right to agitate other and further grievances, if any, before the appropriate forum.

6. Thus, the main prayer regarding allowing the petitioner to join the post of Section Officer in terms of the aforesaid appointment order dated 27.1.1986 was pressed only on the ground that the petitioner ought to have been allowed to join his service after his full exoneration in the year 1991 in the criminal case and the pendency of appeal should not come in his way. However, in view of the express final and binding order of this Court in the petition of the petitioner himself that joining time cannot be extended for the reason that the petitioner was involved in a criminal case, the issue cannot be reagitated in a different form. While deciding the petition of the petitioner, the ground for not relieving the petitioner is also held to be quite proper and genuine. Therefore, it is also now not open for this Court to hold that the petitioner ought to have been relieved or that the extension of joining time ought to have been granted. In any case, the petitioner could not have claimed any indefeasible right or lien over the post for which he was selected since the appointment order relied upon by him is clearly an order inviting to join on purely probationary basis and the appointment was expressly temporary subject to fulfillment of several conditions which could not be complied by the petitioner.

7. Therefore, keeping aside the contentions and claims of the petitioner arising from his continuous service under the Department of Employment and Training, which it would be open for the petitioner to agitate before the appropriate forum, the petition is dismissed. Rule is discharged with no order as to costs.

Sd/-

(D.H.Waghela,J.)

(KMG Thilake)